

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EUCLIDES SOTO, LOUIS A. MARTINEZ,)	CIVIL ACTION
JOSE RAMIREZ, CLEMENTE HERNANDEZ,)	NO.: 04-10892-JLT
CESAR PIZARO, ELISON PENA,)	
JUAN COLON, JOSE ORTIZ,)	
RAFAEL TORRES, ANGEL BAEZ,)	
ANTONIO MARTINEZ, WILFREDO ORTIZ,)	
EULOGIO ORTIZ, MIRRRAIN MIRANDA,)	
RAFAEL MORENO, NELSON ACEVEDO,)	
and RAMON RODRIGUEZ,)	
Plaintiffs,)	
)	
v.)	
)	
SHERMAN-FEINBERG CORPORATION,)	
FARNSWORTH FIBRE CORPORATION,)	
UNITED STEELWORKERS OF AMERICA,)	
LOCAL 421-U, AND UNITED STEELWORKERS)		
OF AMERICA,)	
Defendants.)	
)	

**OPPOSITION TO MOTION TO STRIKE MOTION TO ATTACH ASSETS OF
THE UNITED STEELWORKERS OF AMERICA (FED.R.CIV.P. 64)**

Contrary to the motion to strike, the motion for the attachment is indeed supported by affidavit. The motion relies on deposition testimony, which is in the record of the case annexed to the Affidavit of Robert O. Berger. Therefore, the motion to strike should be denied as it is incorrect facially.

Testimony of Membership

In discovery, in their own words, the plaintiffs testified:

Deposition of Eulogio Ortiz of March 23, 2005 (Exhibit 1) (Attached to Aff. of Robert O. Berger)

EXAMINATION BY MR. BERGER:

(P20) Q ... Did the union ever tell you or notify you in any way about quarterly meetings?
A No.

(P21, 22) Q Do you believe it was because you are Hispanic that the union did not invite you to meetings or otherwise protect you?
MR. LICHTEN: Objection.
A Yes.
Q During this period of time, have you been suffering emotionally?
A Yes.

(P22) Q Do you feel humiliated about being on welfare?
A Yes, exactly.

(P23) A ...Yes, because every time they [the union] would come over, they would go straight only to their office. And then they would send someone to tell us, stop all the machines and make sure that everybody comes down, and then a guy from the union would come down. They would stop the machines, make us come all the way down. Then when we went down, the people from the union would go in there, and they would be speaking to them.

Deposition of Antonio Martinez of March 23, 2005 (Exhibit 2) (Attached to Aff. of Robert O. Berger)

(P15, 16) Q Now, in the plant were there fires constantly?
A Oh, yes.
Q And in the plant, was there dust flying around?
A Too much, a lot.
Q In the plant, did people lose fingers?
A Yes.

Q Well what safety -- what did the union -- well, strike that.
Did the union have a bulletin board for posting notices?
A No.
Q Did the union ever give you any notices of meetings?
A No.
(P16) A I think that they discriminated against us because first of all, they didn't help us. Also, we were not -- they didn't tell us when the company was going to close. And every time there was some sort of a-- we had to draw up a contract or some sort of complication, they would always go to the office, their office, and spend a long time there. And then afterwards when they would come to us, they would say, "Oh, you know what? Whatever the company says."

Deposition of Wilfredo Ortiz of March 23, 2005 (Exhibit 3) (Attached to Aff. of Robert O. Berger)

(P24) A. No. I don't think so, but since we all have rights, the fact that we're Hispanics and we didn't speak the language, they would take vengeance on us because of that.
Q Take advantage of you?
THE INTERPRETER: Vengeance.
Q Okay, But do you mean take advantage of you?
A Yes, like discriminating me.
(P25-26) Q Now, did the union ever put up bulletin board for you to give you information about anything?
A No.
Q Did the union provide any assistance to you about the people who had suffered injuries like loss of fingers, cutting of the face, and this kind thing?
MR. LICHTEN: Objection.
(P26) A No.

Q Tell me, is there any doubt in your mind whether they know about people who had lost their fingers and people who had been cut on their face?

MR. LICHTEN: Objection.

A Yes, I know I've seen them. There have been many accidents there.

MR. LICHTEN: Move to strike. Not responsive.

Q Can you tell us about what you observed.

A There was the accident with Jose Ortiz. I was present then when the machine cracked [verbatim] his finger.

(P27) A He was cleaning the machine, and afterwards, the machine was still running, and then the machine cracked his finger, cut it.

Q And how old was that machine?

MR. LICHTEN: Objection.

A An antique.

Q A hundred years; do you think?

A Yeah.

Q Did the union ever look at any of machines like this one where this accident happened?

A No.

Q You were going to describe other injuries that happened there?

A Yes. There were people there too.

Q Now, did the union ever make sure that the plant complied with federal laws like the Occupational Safety Act?

MR. LICHTEN: Objection.

A I don't know. I don't know.

(P28) Q Did they ever come to see whether any of the you were protected from the fires?

MR. LICHTEN: Objection.

A No.

Q And how about for the handling of paints and chemicals?

A No.

Q Did, in your opinion, the union care about what happened to the safety of the people in this plant that consisted solely of Hispanics?

MR. LICHTEN: Objection.

A No. They never cared for anything, no.

Q And you're not a member of the Upholstery Workers Union, are you? You're a member of the Steelworkers union?

MR. LICHTEN: Objection.

A Yes.

(P29) Q Were there some grinder machines there?

A Yes.

Q How old were they?

A They're old. They're antique. They're so old they don't even have replacement parts or pieces for those machines.

(P37) A ...Because on certain occasions, I was obligated -- we were obligated to work overtime. And sometimes, they would make us -- make me extinguish fires by ourselves. Sometimes I would have to get on top of a room myself to extinguish a fire on top of a machine, and all of that smoke, I was inhaling.

Deposition of Rafael Torres of March 23, 2005 (Exhibit 4) (Attached to Aff. of Robert O. Berger)

EXAMINATION BY MR. LICHTEN:

(P14) Q You said that you believed that someone with less seniority than you got a job, a daytime job, that you should have gotten; is that right?

A Yes.

(P21-22) Q Okay. Did you ever attempt to call the Steelworkers union office about a problem or a concern that you were having at work?

A No, because they wouldn't allow us to call them personally.

(P22) A The representative, the person that goes to the company or whatever company. Whenever there's a problem, the person that comes from their office.

EXAMINATION BY MR. BERGER:

(P31) Q Was everybody at Farnsworth Hispanic?

A Yes.

Q Did they tell you about their [the union and its local] meetings four times a year?
A No.
Q So they didn't invite you to any of them?
A No.

(P32-33) A ...My opinion is that the union didn't back us up, did not give us any support in reality the way they should have done that the moment when we needed them the most.
Q And do you think that was connected to the fact that all of the workers were Hispanic?
MR. LICHTEN: Objection.
A I would think that, yes.

Deposition of Nelson Acevedo of March 24, 2005 (Exhibit 5) (Attached to Aff. Robert O. Berger)

EXAMINATION BY MR. BERGER:

(P17) Q Did you ever get invited to the quarterly meetings of the Steelworkers?
A No, never.

Deposition of Juan R. Colon Ortiz of March 23, 2005 (Exhibit 6) (Attached to Aff. Robert O. Berger)

EXAMINATION BY MR. LICHTEN:

(P10) A ...Different tanks, I would take paint from one tank and put it in another tank.
A Yes. I left that place for a while because a problem that I have with my lung or my lungs, and they gave me some sort of pills, medication, to see if it would clear them up, but --

(P11) A I prepared these tanks.
A It's paint, prepare the paint.
A To paint the material.

(P19) Q No, how many years did you work with the paint?
A 18 years.
Q And what are you problems with your lungs?
A Sometimes I don't breathe at all, and I cough or spit blood.
Q How much blood do you spit?

(P20) A Sometimes two or three times a week. Now, I don't spit as much blood as I used to before because I'm taking the pills and I'm not there.

Deposition of Miriam Caminero of March 24, 2005 (Exhibit 7) (Attached to Aff. of Robert O. Berger)

(P17) Q Now, were you ever invited to any meetings of Local 421 of the United Steelworkers of America?
A No, I never received anything.
Q Did they have a place where they posted notices at the plant at Sherman-Feinberg?
Q Now, what protections did you have for the closing of the plant?
A None.

(P21-22) Q And do you think that the people who worked there were treated fairly by the union?
MR. LICHTEN: Objection
A No.

Deposition of Jose Enrique Ortiz of March 22, 2005 (Exhibit 8) (Attached to Aff. of Robert O. Berger)

EXAMINATION BY MR. BERGER

(P70) Q Did Kenny [the company representative] ever talk to you about inserting plant-closing language into the agreement?
THE INTERPRETER: I'm sorry, I didn't hear that. Did Kenny ever talk to you --
Q Did Kenny ever talk to you about inserting plant-closing language into the agreement?
A (Through the Interpreter) No, he never said anything.
Q Never during those 42 hours [of negotiations]?
A (Through the Interpreter) No.

(P73) Q The very final agreement, was it in English or Spanish?

A (Through the Interpreter) In English. Everything was done in English. And then afterwards, translated in Spanish.

EXAMINATION BY MR. DIAZ:

(P95-96) Q So is it fair to say you didn't really understand what the proper procedure was, other than what your own interpretation was as to what process to follow; is that correct?

A (Through the Interpreter) Yes.

Q And is it fair to say that no one from the United Steelworkers of America and/or Local 421-U ever came to you to find out what your proficiency in English was, correct?

A (Through the Interpreter) No, they didn't.

Q And I'm changing gears to another area.

Whenever Mr. Lowell Alexander told you about any meetings and you didn't have a vehicle, was there any other form of transportation or was there any other offer from the union as to how to get you to a meeting or make sure that you understood where the meetings were in advance so that you could have made appropriate arrangements?

A (Through the Interpreter) No.

Deposition of Elison Pena March 23, 2005 (Exhibit 9) (Attached to Aff. of Robert O. Berger)

EXAMINATION BY MR. LICHTEN:

(P17) A (Through the Interpreter) They didn't protect me. They didn't protect us.

(P18) A (Through the Interpreter) They closed the factory, and we were not -- we were not notified in any way that they were going to close. They didn't do anything to protect us.

A (Through the Interpreter) They didn't help us in any way. I would pay the union dues there for nothing.

(P23) Q Are you aware of any instance in which someone -- in which an employee at Farnsworth complained

about working conditions or that the workplace was unsafe?

A (Through the Interpreter) No. Almost at any time, we have to --

THE INTERPRETER: Verbatim.

A --flee[t] the place, because all of a sudden, something could catch fire often, and all of us would have to just flee the place all the time.

(P25) A (Through the Interpreter) When she [the union interpreter] spoke, she was sort of like pedantic, repugnant.

A (Through the Interpreter) She spoke in a bad way.

(P26) A (Through the Interpreter) ...She wouldn't answer our questions properly. She wouldn't use an appropriate answer, and she was leaning -- she would take their side of it.

(P29) Q Do you ever recall him [the union representative] saying or doing anything that made you think that he was biased against Hispanics?

A (Through the Interpreter) Because -- I don't know, because he would never get together with me.

EXAMINATION BY MR. BERGER:

(P36) A (Through the Interpreter) When the union would go there, first they would go to their office first.

Q Now, what equipment did the union ensure was available for you?

A (Through the Interpreter) None.

Q So that we can make this clear, did you say there were fires often in the plant?

(P37-38) Q Describe to us in detail the nature of the fires in the plant.

A (Through the Interpreter) Because there were a lot of machines, machinery that was on, that was turned on. And because of that, the temperature was very, very hot.

Q And there were fires during the entire time that you were employed at the plant, correct?

A (Through the Interpreter) Yes.

Q Right until November of 2003?

A (Through the Interpreter) Yes.

Q Did they provide any protection for your breathing when there were constant fires at this plant?

(P38) A (Through the Interpreter) No. We had to take the water ourselves with all the smoke and everything, we had to take everything outside.

Q Did the Union help you in any way about this continuing fire situation?

A (Through the Interpreter) No.

Q Okay

(P39) A (Through the Interpreter) Because they didn't pay attention to whatever was said there.

EXAMINATION BY MR. DIAZ:

(P41) Q For example, was there a work area where employees could have posting so that they could have something in Spanish saying contact the Steelworkers at this number, we have a complaint, or contact Local 421-U if you have a complaint, something in Spanish with a phone number so that you can contact someone directly?

A (Through the Interpreter) No.

Q Have you prior to November of 2003 known individuals who are members of other unions?

A (Through the Interpreter) No.

(P45) Q Did they ever offer you at any time prior to your being notified of the plant closings any opportunity for job training, for advancement or to move somewhere else where the union may have had jobs, let's say, Cleveland, Ohio, or any other part of the country?

A (Through the Interpreter) No.

Q --Do you remember the fires?

A (Through the Interpreter) Yes.

Q Okay. And that would be within a few weeks before that incident?

A (Through the Interpreter) Yes, a couple of weeks before that.

Q Okay. And that was fire in the ceiling?
A (Through the Interpreter) It wasn't on the ceiling. It was through the -- the exhaust that would come out, that comes out of the oven.
Q All right. So certainly in the month of November there were fires?
A (Through the Interpreter) There were fires there all the time.

B. THE UNION

The union's conduct disclosed in discovery. The union never grieved any discharges. Deposition of Lowell Alexander, p. 24. (Exhibit 10 annexed to the Aff. of Robert O. Berger) The hourly wage at this plant starts off at \$7.00. The union dues of all Steelworkers are 1.3% of the wage. Id. 21. With respect to other plants, Alexander answered that Sealy Mattress, Bee-Bee Rubber; Rosboro Plastics had plant closing severance language in the collective bargaining agreements. The instant plant did not, nor was it requested in negotiations, Id. 94-95. Furthermore, there was no negotiation of the effects of closing the plant, only bumping rights and medical benefits, id. at 100. (Bumping rights involve intra-union seniority.) There was no right to severance here but there was at the Sealy Mattress, Bee-Bee Rubber, Rosboro Plastics plants. Id. The union provided all drafts of the collective bargaining agreement in English and only the binding one was in Spanish. Id. at 14. There was no provision for severance or plant closing in this agreement. Id. at 11 and 28. The prospect of a plant closing was not even an issue in

the collective bargaining at this plant. Id. 15. For, the Union had not checked the books of Farnsworth Fibre and Sherman-bFeinberg to find out their financial picture although the union wrote the companies in 2002 to request them. Alexander heard scuttlebutt about them taking the money and converting the building into a condominium at one of the meetings prior to the company closing. Id. at 18. The plant had no apprenticeship or training program. Id. at 54. Although there were fires until the closing of the plant, the union was unaware of fires at the plant even though its representative visited the plant. Id. at 84. The union did not know whether employer kept material data safety slips. Id. at 76. There was no hazard safety program or health and safety officer at the plant. Id. at 77 and 81. Alexander had been a Steelworker union steward for the gas company; he learned when there was catastrophic injury in his steward capacity; and he simply does not know why he never learned of catastrophic injury at this entirely Latino plant when he was union representative. Id. at 85.

C. THE LAW

Back pay, front pay, emotional distress, and punitive damages appear available here. See *Kolstad v. American Dental Ass'n.*, 119 S. Ct. 2118 (1999) (egregious misconduct not necessary). The union disclosed no insurance contract under Rule 26. An attachment protects the plaintiffs.

/s/ John Lee Diaz and Robert O. Berger
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